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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FILE NO. 023976-0008

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ITTA Comments for Phase 2 of CAM and ARMIS Reporting Requirements Proceeding, CC Docket No. 00-199

Dear Ms. Salas:

Please find enclosed an original and four copies, plus one copy for date-stamp return receipt purposes, of the comments of the Independent Telephone & Telecommunications Alliance in *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Notice of Proposed Rulemaking in CC Docket No. 00-199, FCC 00-364 (rel. Oct. 18, 2000). If you have any questions or comments related to these comments, please do not hesitate to contact me directly at (202) 637-1008. Thank you for your consideration in this matter.

Sincerely yours,

Benoit Jacqmotte

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Enclosures

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In the Matter of	)	
	)	
2000 Biennial Review --	)	CC Docket No. 00-199
Comprehensive Review of the	)	
Accounting Requirements and	)	FCC 00-364
ARMIS Reporting Requirements for	)	
Incumbent Local Exchange Carriers:	)	
Phase 2 and Phase 3	)	
	)	
Phase 2 Comments	)	

COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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December 21, 2000

Summary

ITTA strongly supports the Commission's new focus on mid-sized ILEC issues and applauds the Commission's recent CAM and ARMIS reform efforts, especially as applied to mid-sized carriers. The Commission has long taken a functional approach in setting CAM and ARMIS reporting requirements for ILECs, determining that certain small and mid-sized ILECs should be exempt from any reporting requirements because the benefits of the reporting obligations outweigh the burdens. Congress in the Telecommunications Act of 1996 and the House of Representatives in the Independent Telecommunications Consumer Enhancement Act have endorsed a threshold of two percent of the nation's subscriber lines as a proper differentiation between small and mid-sized carriers and larger ILECs for CAM and ARMIS requirements. The Commission should classify either all two-percent carriers or all carriers with aggregate affiliated ILEC revenues of less than $7 billion as Class B carriers. Additionally, the $7 billion aggregated affiliate ILEC revenue threshold should be indexed for inflation, in conformance with the requirements of the 1996 Act.

In conjunction with these new threshold standards for Class B carriers, the Commission should eliminate all CAM requirements, including CAM attestation engagements, and ARMIS reporting burdens for such Class B carriers. ITTA strongly believes that the burdens of requiring any CAM and ARMIS obligations on mid-sized carriers far outweigh any benefits from such requirements. The CAM biennial attestation is particularly burdensome for mid-sized carriers and should be eliminated. To the extent that the 43-08 ARMIS report is restructured, ITTA strongly opposes any application of such a report to mid-sized carriers. Finally, ITTA supports certain changes to the Part 32 Accounting Rules and urges the Commission to adopt significant regulatory reforms in conformance with its mandate under Section 11 of the Communications Act.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3	)	CC Docket No. 00-199 FCC 00-364
	)	
Phase 2 Comments	)	

COMMENTS OF THE
<u>INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE</u>

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in connection with the second phase of the Commission's comprehensive review of its accounting rules and reporting requirements for incumbent local exchange carriers (ILECs).[1]

I. INTRODUCTION

A. ITTA STRONGLY SUPPORTS THE COMMISSION'S PROCESS AND NEW FOCUS ON MID-SIZED CARRIER ISSUES

ITTA is an organization of mid-sized ILECs each serving fewer than two percent of the nation's access lines. ITTA members collectively serve over eight million access lines in over 40 states and offer a diversified range of services to their customers. ITTA's smallest member company serves just under 100,000 access lines, while its largest serves over two

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1 *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, Notice of Proposed Rulemaking in CC Docket No. 00-199, FCC 00-364 (rel. Oct. 18, 2000) (*2000 Review Notice*).

million. While most ITTA members are regulated by the Commission under rate-of-return regulation, several, such as Cincinnati Bell Telephone Company, Citizens Communications, and Valor Telecommunications Southwest, LLC, have elected price cap regulation. Similarly, most members qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended (Act).[2]

ITTA strongly supports the Commission's recent proposals to reduce accounting and reporting burdens on mid-sized carriers. ITTA submits that differentiation of accounting burdens among different segments of the industry is appropriate and integral to the Commission's accounting policies. ITTA specifically supports the Commission's efforts to reduce or eliminate the cost allocation manual (CAM) requirements and Automated Reporting Management Information System (ARMIS) reporting burdens on mid-sized carriers.[3] ITTA particularly supports the Commission's proposal to eliminate the biennial CAM attestation requirement. This process is among the greatest regulatory compliance costs mid-sized ILECs face under the CAM and ARMIS rules today.

B. BACKGROUND AND HISTORY OF COST ALLOCATION AND ACCOUNTING REQUIREMENTS

In its report and order implementing the separation of regulated and non-regulated costs for ILECs, the Commission suggested that "small companies" did not lack the incentive to shift costs between regulated and non-regulated services and therefore required these small and

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[2] 47 U.S.C. § 153(37).

[3] ITTA acknowledges that its members would continue to be subject to the Commission's cost allocation rules per § 64.901.

mid-sized ILECs to conform to its cost allocation standards.[4] The Commission did, however, determine that the "potentially burdensome enforcement provisions" would apply only to the largest ILECs.[5] Even in a marketplace where competitive pressures and threats provided fewer marketplace discipline processes than they do today, the Commission determined that the burdens of imposing reporting requirements on small and mid-sized ILECs outweighed the benefits, concluding that there was simply no need to impose complex and expensive record-keeping requirements on carriers who controlled only small portions of the national market.

In its Joint Cost Order, the Commission established that only Tier 1 local exchange carriers (LECs) and dominant interexchange carriers (*i.e.*, AT&T) would be required to submit CAMs for Commission review.[6] Tier 1 companies were defined as those that earned "more than $100 million in total company annual regulated revenues."[7] In 1987, the Commission developed ARMIS in order to collect financial, operating and other information from certain ILECs.[8] The Commission designed ARMIS to "facilitate the Commission's decision making efforts and to eliminate undue reliance on ad hoc information requests and

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4 *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, et al.*, Report and Order in CC Docket No. 86-111, FCC 86-564 (rel. Feb. 6, 1987) (*Joint Cost Order*), ¶¶ 47-49. This determination was affirmed in *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, et al.*, Order on Reconsideration in CC Docket No. 86-111, FCC 87-305 (rel. Oct. 16, 1987), Order on Further Reconsideration in CC Docket No. 86-111, FCC 88-355 (rel. Nov. 18, 1988), *aff'd sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

5 Joint Cost Order at ¶ 47.

6 *Id.* at ¶ 42.

7 *Id.* at fn. 70 (*citing Public Notice, Monitoring Plan, Mimeo No. 2133* (rel. Jan. 25, 1985) at ¶ 7). Specifically, in another proceeding, Tier 1 carriers were defined as those companies having more than $100 million in total company regulated revenues, as determined by the 1984 Annual Statistical Volume II of the United States Telecommunications Association Statistical Reports of Class A and B telephone companies for the year 1983. *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies*, Report and Order in CC Docket No. 86-182, FCC 87-242; Erratum DA 87-1418, (rel. Sept. 17, 1987, Cor. Oct. 7, 1987), *modif. on recon.*, Order on Reconsideration, FCC 88-311 (rel. Oct. 4, 1988), fn. 4 (*1987 Automated Reporting Requirements Order*). Class A companies are currently defined at 47 C.F.R. § 32.11(a)(1) as having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

special studies."[9] In the Telecommunications Act of 1996 (1996 Act), Congress mandated that the Commission adjust its revenue thresholds for inflation in connection with its CAM requirements and ARMIS reporting obligations.[10] The Commission has decided to index the revenue threshold for inflation in accordance with the Gross Domestic Product Chain-type Price Index every year.[11]

Section 11 of the Act requires the Commission, in every even-numbered year, to "review all regulations issued under this Act in effect at the time of review that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service."[12] If the Commission makes such a determination, it must repeal or modify the regulation.[13]

As part of the 1998 Biennial Review and the Commission's response to ITTA's Petition for Forbearance, the Commission streamlined the accounting requirements and reduced CAM-related burdens for certain mid-sized ILECs.[14] In a related order, also issued as part of the Commission's 1998 Biennial Review and in response to ITTA's Petition for Forbearance, the

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8 1987 Automated Reporting Requirements Order.

9 2000 Review Notice at ¶ 9.

10 P.L. 104-104 (1996), § 402(c).

11 *See* 47 C.F.R. § 32.9000.

12 47 U.S.C. § 161(a).

13 *Id.* at § 161(b).

14 *See 1998 Biennial Review – Review of Accounting and Cost Allocation Requirements, et al.,* Report and Order in CC Docket No. 98-81, Order on Reconsideration in CC Docket No. 96-150, Fourth Memorandum Opinion and Order in AAD File No. 98-43, FCC 99-106 (rel. June 30, 1999) (*Accounting Reductions Report and Order*).

Commission permitted mid-sized Class A operating companies to file ARMIS reports at the Class B level of accounting detail.[15]

ITTA commends the Commission for holding a public meeting and hearings with mid-sized ILECs in April and May, 2000. ITTA's members appreciate the opportunity to share their views on these filing and reporting requirements directly with the Commission staff. Additionally, ITTA commends the approach taken by the Commission in issuing its Responsible Accounting Officer (RAO) letters in an attempt to provide guidance for mid-sized ILECs' new CAM attestation and Class B CAM filing obligations.[16]

ITTA strongly supports the Commission's current proposals to reduce accounting and reporting burdens on mid-sized ILECs.[17] ITTA specifically supports the Commission's proposals and efforts to reduce or eliminate the CAM maintenance and ARMIS reporting burdens on mid-sized ILECs.

C. INDEPENDENT TELECOMMUNICATIONS CONSUMER ENHANCEMENT ACT OF 2000

The U.S. House of Representatives has also recognized that mid-sized ILECs require appropriate levels of regulation through passage of the "Independent Telecommunications Consumer Enhancement Act of 2000."[18] In this bill, the House found that existing regulations are typically tailored to the circumstances of the largest ILECs and impose disproportionate burdens on ILECs with fewer than two percent of the subscriber lines installed

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15 *1998 Biennial Review – Review of ARMIS Reporting Requirements, et al.*, Report and Order in CC Docket No. 98-117, Fifth Memorandum Opinion and Order in AAD File No. 98-43, FCC 99-107 (rel. June 30, 1999) (*1998 ARMIS Order*).

16 *See RAO Letter 29*, DA 00-265 (rel. Feb. 14, 2000) (*RAO Letter 29*); *RAO Letter 30*, DA 00-355 (rel. Feb. 24, 2000) (*RAO Letter 30*).

17 *See* 2000 Review Notice at ¶ 80.

in the aggregate nationwide (two percent carriers), impeding such carriers' ability to deploy broadband telecommunications services and launch competitive initiatives in less densely populated regions of the U.S.[19] The House also found that reducing regulatory burdens will enable the two percent carriers to accelerate the deployment of advanced services and launch competitive initiatives in less densely populated regions.[20] In furtherance of these findings, the House sought to both exempt two percent carriers from federal CAM requirements, including auditing requirements, as well as ARMIS reporting. In addition, H.R. 3850 would require the Commission to separately evaluate the burden that any proposed regulatory, compliance or reporting requirements would have on two percent carriers.[21]

Consistent with these streamlining goals and in conformance with the statutory mandate of Section 11, the Commission has now initiated its 2000 biennial comprehensive review of its accounting rules and related reporting requirements in 1999.[22] ITTA applauds the approach taken by the Commission in the 2000 Review Notice in providing a framework for differentiating between classes of ILECs and suggesting opportunities for meaningful reform and regulatory relief for mid-sized ILECs. This approach is in line with the views expressed by the Commission in its draft strategic plan, in which it stresses the need to reduce "the burden of filing, reporting, record keeping, and accounting requirements across all communications

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18 H.R. 3850, 106th Cong. (2000) (*H.R. 3850*).

19 *Id.* at § 2(a)(4).

20 *Id.* at § 2(a)(5)-(6).

21 *Id.* at § 4.

22 The Commission has indicated its intention to bifurcate the comments period into two phases; comments on further accounting and reporting reform measures would be the focus of phase two, and consideration of appropriate indicia for more significant deregulation would be the focus of phase three. *See* 2000 Review Notice at ¶ 1.

industries, particularly for small companies, where no longer necessary to further the public interest."[23]

II. ITTA SUPPORTS RELIEF FOR MID-SIZED ILECS

A. SUMMARY OF CURRENT THRESHOLD MECHANISMS

Currently, ILECs are segregated on the basis of their revenues on both the operating and holding company levels. ILEC operating companies with annual revenues from regulated telecommunications operations that are below the indexed revenue threshold[24] are classified as Class B carriers, while those with aggregate revenues above the threshold are designated as Class A.[25] Class B carriers are not required to submit CAMs or make ARMIS reports.[26] The Commission recently relaxed its reporting requirements for Class A mid-sized ILECs (*i.e.*, those with revenues above the indexed revenue threshold and with aggregate affiliated ILEC annual revenues of less than $7 billion) by permitting such carriers to meet their CAM requirements and ARMIS reporting obligations using Class B accounts.[27] Specifically, the Commission recently decided that mid-sized ILECs would be permitted to submit CAMs on the basis of Class B accounts and that these ILECs would only be required to obtain CAM attestations every two years.[28] In a second recent order, the Commission decided that ILECs with annual revenues above the indexed revenue threshold but with aggregate affiliated ILEC

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23 *Draft Strategic Plan: A New FCC for the 21st Century* (Aug. 1999), p. 14 (*Draft Strategic Plan*).

24 *See* Sec. I.B.

25 *See* 47 C.F.R. § 32.11. The Commission has adjusted the annual indexed revenue threshold to $114 million for 2000. *See* "Annual Adjustment of Revenue Threshold," *Public Notice*, DA 00-971 (rel. May 3, 2000).

26 *See* Joint Cost Order at ¶ 47.

27 *See* Accounting Reductions Report and Order.

28 *Id.* at ¶ 14. Under the Commission's current rules, there are two classes of ILECs for accounting purposes: Class A and Class B. *See* 47 C.F.R. § 32.11. Generally, Class A accounts provide more detailed records of investment, expense and revenues than Class B accounts. *See* Accounting Reductions Report and Order at

revenues below $7 billion would be permitted to submit their ARMIS reports on the basis of Class B, rather than Class A, accounts.[29]

In the 2000 Review Notice, the Commission has submitted specific proposals for additional streamlining or elimination of its accounting and reporting requirements for mid-sized ILECs and has requested comments on a number of its proposals.

B. ITTA SUPPORTS ELIMINATION OF CAM REQUIREMENTS, CAM ATTESTATION ENGAGEMENTS AND ARMIS REPORTING FOR MID-SIZED CARRIERS

1. CAM and ARMIS Requirements Should Not Apply to Mid-Sized Carriers

From the commencement of its cost allocation regulation of ILECs, the Commission has taken a functional approach in an attempt to balance the Commission's "regulatory needs for information from mid-sized ILECs against [the] desire not to impose unreasonable or unnecessary reporting requirements on telephone companies."[30] Analysis of the Commission's current functional approach regarding CAM requirements and ARMIS reporting burdens for mid-sized ILECs indicates that these obligations are not necessary to deter or detect cost shifting and impose unduly heavy burdens on mid-sized ILECs obligated to comply with CAM and ARMIS reporting requirements. In addition, these burdens are particularly heavy and oppressive for those carriers who are now becoming subject to these reporting requirements.

Class B ILECs, including Class B affiliates of mid-sized ILECs, have always complied with the Commission's rules against cost-shifting without burdensome CAM requirements and ARMIS reporting obligations. There is no reason to expect that application of

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¶ 11, ¶ 21 (noting that "[s]uch attestation would require significantly less stringent standards of testing, reporting and expression of opinion than the present audit requirement").

29 1998 ARMIS Order at ¶ 11.

30 *Id.* at ¶ 12.

these reporting and record-keeping obligations to additional mid-sized carriers is now required to ensure compliance with the Commission's rules. In light of the House of Representatives' recognition that small and mid-sized ILECs do not require the same regulatory treatment as the larger ILECs, mid-sized ILECs should be entirely freed from any CAM requirements and ARMIS reporting obligations.[31] Such a change in the Commission's reporting requirements also is consistent with the Commission's own view of its future regulatory role with respect to smaller companies when such reporting and accounting burdens are "no longer necessary to further the public interest."[32] Additionally, the Commission staff has recommended further changes to CAM requirements in these proceedings.[33]

2. The Burdens of the Current CAM and ARMIS Reporting Requirements for Mid-Sized Carriers Outweigh the Benefits

For mid-sized ILECs, the burdens of any CAM requirements or ARMIS reporting significantly outweigh the benefits accruing to the Commission and the public from obtaining the limited data these filings produce.[34] The total burden of the costs of these regulatory requirements fall disproportionately on mid-sized carriers because, although the costs of compliance do not vary greatly with company size, mid-sized carriers have substantially fewer customers across which to spread these regulatory costs. In passing H.R. 3850, the House of Representatives explicitly recognized the greater per-customer burdens imposed on mid-sized

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31 *See* H.R. 3850 at § 2.

32 Draft Strategic Plan at p. 14.

33 Federal Communications Commission, *Biennial Regulatory Review 2000, Staff Report*, (rel. Sept. 18, 2000), p. 111.

34 See Independent Telecommunications Consumer Enhancement Act of 2000, Hearing on H.R. 3850 Before the Subcomm. on Telecomm., Trade and Consumer Protection of the House Comm. on Commerce, 106th Cong. 7-8, 11 (2000) (statement of Larry F. Darby, Darby Associates).

carriers, determining that "[e]xisting regulations are typically tailored to the circumstances of larger carriers and therefore often impose disproportionate burdens on two percent carriers...."[35]

The Commission's CAM requirements and ARMIS reporting regime generates a data set for small and mid-sized carriers that does not provide a comprehensive overview of the operations of either the individual carriers or of this segment of the industry as a whole. The number of access lines served by the mid-sized ILECs currently required to submit ARMIS reports represents only about six percent of the total number of access lines in the nation.[36] Additionally, these 22 mid-sized ILEC reporting companies represent a small fraction of the more than 1,200 ILEC operating companies currently in the U.S.[37] Hence, the Commission's current CAM requirements and ARMIS reporting obligations apply to only a small subset of the small and mid-sized ILECs in the U.S.

In addition, the operating companies that are subject to CAM requirements and ARMIS reporting obligations are not representative of the companies to which they belong, and cannot be used to gain meaningful insight into two percent carriers' total operations. Only the largest and most populous service territories served by two percent carriers are included in ARMIS; the vast majority of their smaller ILEC affiliates are not and have smaller operations of much different character. By requiring only a small portion of the mid-sized ILECs to comply with CAM and ARMIS obligations, the Commission generates a set of data that does not permit

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35 H.R. 3850 at § 2(a)(4).

36 According to *Statistics of Communications Common Carriers (1999)* (Table 2.6 – Operating Statistics of Reporting Local Exchange Carriers as of Dec. 31, 1999), the total number of switched access lines reported in the U.S. (including Puerto Rico and the other territories) is 174,712,492. The number of switched access lines of the reporting mid-sized ILECs is 10,918,023, representing 6.25 percent of the total nationwide.

37 According to *Statistics of Communications Common Carriers (1999)* (Table 2.11 – Statistics of Reporting Mid-Sized Local Exchange Carriers as of Dec. 31, 1999 and for the year then ended), 22 mid-sized ILECs report under ARMIS.

meaningful analysis or conclusions for either the overall telecommunications industry or mid-sized ILECs as a whole.

Because the mid-sized carrier data set that the CAM and ARMIS rules generate is so incomplete, it is of limited value at best to the Commission in drawing meaningful industry-wide conclusions or setting public policy. Indeed, the Commission has long recognized that the data obtained from CAM and ARMIS reporting are not very useful for purposes of overseeing the operations of small and mid-sized ILECs, who have fewer "opportunities and incentives for shifting costs between services" than other companies.[38] Recognizing the limited value of mid-sized carrier data, for example, the Commission in 1997 determined to rely only on BOC data in measuring ILEC productivity for purposes of setting the price cap carrier "X-factor."[39]

Even the burden of the Commission's restructured compliance requirements outweighs the potential benefits to be gained. In 1999, for the first time, the Commission permitted mid-sized ILECs to file CAMs at the Class B level of accounting detail and allowed mid-sized ILECs to submit biennial CAM attestations instead of annual CAM audits. As discussed in greater detail *infra*, even these more modest requirements can create additional costs for a mid-sized ILEC of many dollars per line – costs that are ultimately borne by the consumer. Given the great per-customer expense of compliance, and the lack of any demonstrable pattern of abuse, the Commission should no longer subject any mid-sized carriers to these requirements.

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38 1998 ARMIS Order at ¶ 12.

39 *Price Cap Performance Review for Local Exchange Carriers*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16694 (1997), *Stay Den., Access Charge Reform*, 12 FCC Rcd 10,175 (rel. June 18, 1997) , *Aff'd in Part, Rev'd in Part and Remanded sub nom. U.S. Tel. Ass'n v. FCC*, 188 F.3d 521, 338 (D.C. Cir. 1999) *Decided After Remand by Fed.-State Joint Board on Univ. Service*, 15 FCC Rcd. 1679 (rel. Oct. 8, 1999).

3. The Commission Should Classify Either All Two-Percent Carriers or All Carriers with Aggregate Affiliated ILEC Revenues of Less Than $7 Billion as Class B Carriers

ITTA supports the classification of all mid-sized ILEC operating companies as Class B carriers, thereby eliminating all CAM requirements and ARMIS reports for these carriers.[40] By designating all mid-sized ILECs as Class B carriers, the Commission would create a bright-line, administratively simple rule that avoids the complexity of the current system, whereby some mid-sized ILECs are classified as Class A carriers but are treated as Class B carriers for certain purposes.

In order to best effectuate straightforward CAM requirements and ARMIS reporting requirements, the Commission should classify all mid-sized carriers as Class B carriers using either the "two percent" standard established legislatively in the 1996 Act and endorsed by the House in H.R. 3850,[41] or the $7 billion standard currently in effect. As described *supra*,[42] under the first standard, all two percent carriers would be classified as Class B carriers and, therefore, be exempt from CAM requirements and ARMIS reporting obligations. Additionally, under the second standard, all mid-sized carriers with aggregate affiliated ILEC revenues below $7 billion would qualify as Class B carriers and therefore be exempted from CAM requirements and ARMIS reporting obligations.

The Commission has previously declined to look to the two percent standard provision of the 1996 Act in the course of establishing a CAM filing or ARMIS reporting

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40 *See* 2000 Review Notice at ¶ 80.

41 *See* 47 U.S.C. § 251(f)(2). This provision of the 1996 Act sets forth that a local exchange carrier with fewer than two percent of U.S. subscriber lines may petition a state commission for a suspension or modification of certain requirements of the section, including interconnection, resale and collocation duties.

42 *See* Section I.C.

threshold.[43] The Commission reasoned that the CAM and ARMIS reporting threshold level should not be tied to a percentage of the nation's access lines. Because the use of such a standard would require annual and expedited review of the nation's access line count, and because the Commission had discovered discrepancies in the past in the interpretation of the definition of "access line" among different carriers, the agency decided the "simpler approach" was to retain the $100 million filing threshold adjusted annually for inflation.[44]

However, the two percent standard represents Congress's view of a proper differentiation between large ILECs with substantial resources that require heightened Commission regulation and scrutiny, and small and mid-sized ILECs for which this high level of regulation would (i) have a significant adverse economic impact on consumers of telecommunications services, (ii) impose an economically burdensome requirement on the smaller ILECs, or (iii) be technically infeasible.[45]

More recently, the House of Representatives explicitly endorsed the two percent standard as an appropriate one for CAM and ARMIS differentiation in H.R. 3850, noting that the current regulatory regime imposes "disproportionate burdens" on two percent carriers.[46] The House of Representatives indicated its intention that mid-sized ILECs should be exempted from excessive regulatory burdens, including CAM filing and auditing and ARMIS reporting requirements, because they were "uniquely positioned to accelerate the deployment of advanced

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43 *See Implementation of the Telecommunications Act of 1996, et al.*, Report and Order in CC Docket No. 96-193 and AAD 95-91, FCC 97-145 (rel. May 20, 1997), ¶ 69 (*1997 Implementation Order*).

44 *Id.* at ¶¶ 69-70.

45 *See* 47 U.S.C. § 251(f)(2). State commissions are directed to grant a "two percent" ILEC's petition for suspension or modification of such a requirement if one of these conditions is met and doing so is in the public interest, convenience and necessity.

46 H.R. 3850 § 2(a)(4).

services and competitive initiates for the benefit of consumers in less densely populated regions of the Nation."[47] In order to differentiate between the large and mid-sized carriers, and in order to highlight the unique abilities and attributes of mid-sized ILECs that required a lower regulatory burden in order to further the public interest, the House relied on the two percent standard.

Moreover, in the process of House consideration of H.R. 3850, no witness and no Representative raised even a single question regarding the appropriateness of the two percent standard. In fact, the House specifically chose the two percent standard as the proper one for identifying the mid-sized carriers that were uniquely situated for purposes of enhancing competition and deploying advanced services to rural areas. In the course of endorsing the two-percent standard as the proper one for awarding regulatory relief in H.R. 3850, House Subcommittee Chairman Billy Tauzin (R-LA) remarked that "[t]he current law [1996 Act] recognizes that there's something magical about a two-percent" standard and that "there's a clear legislative intent [in the 1996 Act] in defining a two-percent company as something that is deserving of less regulatory burdens than companies that obviously have a larger share of the marketplace and therefore should be regulated more deeply as monopolies."[48] While expressing concern with certain facets of the proposed legislation during testimony at the July 20, 2000 Subcommittee Hearing, the Common Carrier Bureau also indicated its "strong support for the

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47 *Id.* at § 2(a)(3).

48 *Independent Telecommunications Consumer Enhancement Act of 2000, Hearing on H.R. 3850 Before the Subcomm. on Telecomm., Trade and Consumer Protection of the House Comm. on Commerce*, 106th Cong. (July 20, 2000) (*July 20, 2000 Subcommittee Hearing*) (comments of Rep. W.J. Tauzin (R-LA), Subcommittee Chairman, during Subcommittee Hearing).

overall goal of this legislation."[49] Critically, the two percent standard captures the important differences between large and mid-sized ILECs in the context of the growth-oriented and dynamic nature of the telecommunications market. In furtherance of its support for the goals of H.R. 3850, the Commission should be guided by this relative standard set forth by Congress.

The Commission has promulgated several rules in the past year that require ILECs to report data reflecting the number of access lines they control on an expedited basis, rendering the collection of the data to determine the two percent standard a straightforward, efficient process.[50] For example, in connection with Universal Service Fund obligations, the Commission's rules currently require all LECs to report the number of working loops in each of their study areas or their wire centers, whichever is applicable to the reporting carrier.[51] While rural telephone companies are required to report their working loop counts to the National Exchange Carrier Association (NECA) annually, they may update this information as often as quarterly.[52] In addition, non-rural telephone companies, representing the vast majority of the lines in the nation, must update this information to NECA on a quarterly basis.[53]

In light of the data it currently receives, NECA would be able to confirm the total number of access lines installed in the aggregate nationwide expeditiously without breaching its

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49 July 20, 2000 Subcommittee Hearing (statement of Carol Mattey, Deputy Chief of Commission Common Carrier Bureau, at 2).

50 According to the Commission's rules, eligible telecommunications carriers providing service within an area served by a price cap LEC are required to submit line count data to the Universal Service Administration Company (USAC) on a quarterly basis. This data must show the number of lines the carrier serves within each price cap LEC study area disaggregated by unbundled network element zones if such zones have been established within that study area, showing residential/single-line business and multi-line business line counts separately. 47 C.F.R. § 54.802(a).

51 47 C.F.R. § 36.611.

52 *See* 47 C.F.R. § 36.612(a).

confidentiality obligations to LECs. No additional "annual and expedited" review would be required. With this information in hand, the Commission could easily confirm the two percent reporting threshold, rendering the establishment of whether mid-sized ILECs cross this threshold a straightforward process.

Most importantly, the use of the two percent standard would prevent the imposition of burdensome regulation on mid-sized carriers in situations when their revenues increased while their relative market shares remained the same. In conclusion, under ITTA's proposal, an ILEC would not be required to comply with CAM and ARMIS reporting requirements until its level of affiliated ILEC lines reached two percent or more of the access lines installed in the aggregate nationwide *or* aggregate affiliated ILEC company revenues exceeded $7 billion. The two percent threshold would not require annual review for purposes of determining thresholds, would implement Congress's intent demonstrated in both the 1996 Act and H.R. 3850 to regulate two percent carriers differently, would provide a consistent and straightforward standard of segregation that would be easy to confirm and verify.

4. The $7 Billion Aggregate Affiliated ILEC Revenue Threshold Must Be Indexed, As Required By the 1996 Act

The Commission must also adjust the $7 billion aggregate affiliated ILEC revenue threshold for inflation. Congress mandated that the Commission must index its revenue requirements for inflation when establishing reporting requirements pursuant to Part 43 and Section 64.903 of its rules. The 1996 Act requires that: "In...establishing reporting requirements pursuant to part 43 of its regulations (47 C.F.R. part 43) and section 64.903 of its regulations (47

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[53] *See id.* Under Section 36.612(a) of the Commission's rules, the Commission will have access to working loop number information updated four times per year, and this updated information will be current to the date six months previous to the filing date.

C.F.R. 64.903), the Commission *shall adjust* the revenue requirements to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91-141, and annually thereafter."[54] The Commission, however, indicated that it would not index the $7 billion threshold for inflation, choosing instead to monitor the figure "on a regular basis."[55] The Commission also indicated that if it determined the threshold is no longer appropriate due to inflation or other market changes, the threshold would be revised to reflect those changes.[56]

The plain meaning of Congress's legislative mandate requires that the $7 billion threshold also be indexed for inflation. The Commission cannot evade the plain meaning of this statute by establishing a $7 billion aggregate affiliated ILEC revenue threshold that was not in effect in 1996. By its very terms, Section 402(c) of the 1996 Act applies to *any* "revenue requirements" the Commission uses to establish obligations under Part 43 and section 64.903 of its rules. Indexing the $7 billion aggregate affiliated ILEC revenue threshold will help to forestall the "bracket creep" and monitoring problems the Commission now faces with respect to the indexed revenue threshold.

C. ITTA SUPPORTS RELIEF FROM CAM REQUIREMENTS

1. ITTA Supports the Commission's Proposal that Mid-Sized ILECs No Longer File CAMs

ITTA supports strongly the Commission's proposal that mid-sized ILECs no longer file CAMs.[57] The current CAM format is (i) burdensome, (ii) unnecessary to permit mid-sized ILECs to ensure compliance with the Commission's underlying cost allocation rules, and

54 P.L. 104-104 § 402(c) (1996) (Emphasis added)

55 Accounting Reductions Report and Order at ¶ 18.

56 *Id.*

57 2000 Review Notice at ¶ 82.

(iii) inconsistent with the Commission and Congress's historical and functional approaches to cost allocation reporting requirements.

For mid-sized ILECs that have not been required to file the CAM in the past, the incremental burden of crossing the reporting threshold and commencing to comply with the more detailed requirements of § 64.903 (*e.g.*, hiring extra staff to complete the manual, collecting the data in the format required by the Commission's rules) is very large. As discussed in greater detail *supra*,[58] because the enforcement value of the cost allocation data collected is small, maintenance of the CAM would result in a high cost-to-benefit ratio, contrary to the Commission's functional approach.

As discussed *supra*, mid-sized ILECs have long been in compliance with the Commission's underlying cost allocation rules without the need for a cost allocation reporting requirement.[59] While all ILECs have always had the affirmative obligation to eschew cross-subsidization,[60] the Commission has long sought to avoid placing the burden of cost allocation reporting requirements on all but the largest ILECs.[61] Despite the fact that all but a handful of two percent carriers are exempt from the Commission's CAM requirements, these carriers have established no record of noncompliance with the Commission's cost allocation rules. This view has been shared and implemented by Congress in the 1996 Act and by the House of Representatives in H.R. 3850.

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58 Sec. II.B.2.

59 Sec. II.B.1.

60 Joint Cost Order at ¶ 42.

61 *Id.*

2. ITTA Strongly Supports the Commission's Proposal to Eliminate the Biennial Attestation

ITTA strongly supports the elimination of the biennial attestation as proposed by the Commission in its 2000 Review Notice.[62] In spite of the Commission's efforts to minimize regulatory compliance burdens by replacing annual audits with biennial attestations, the biennial attestation portion of the compliance process remains the most costly and resource-intensive part of the compliance process. As detailed *supra*, in the course of the implementation of recent regulatory reforms for mid-sized carriers, the Commission has not given enough consideration to the burdens imposed by the new compliance requirements, which still far outweigh the benefits accrued.[63] Similarly, the attestation requirement will likely be more expensive in the short term and will provide little added value to ensuring mid-sized ILEC compliance with the Commission's cost allocation rules. Roseville Telephone Company, for example, has been quoted a price of $225,000, or approximately $1.70 per line, for the CAM attestation alone. Under Section 220 of the Act, the Commission may request any information from a carrier that it deems necessary to ensure an ILEC's compliance with the Commission's cost allocation rules.[64] Since carriers are already required to keep their books in compliance with the uniform system of accounts and observe the Commission's prohibition against cross-subsidization between regulated and non-regulated activities, the Commission should not require a CAM attestation to supplement these requirements.

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62 2000 Review Notice at ¶ 82.

63 Sec. II.B.2.

64 47 U.S.C. § 220.

D. ITTA SUPPORTS ARMIS REPORTING RELIEF

1. ITTA Supports Elimination of All ARMIS Reporting Requirements

ITTA supports the complete elimination of ARMIS reporting requirements for all mid-sized ILECS. ARMIS reporting places a substantial burden on mid-sized carriers who represent only a fraction of both the total number of small and mid-sized ILECs and the number of access lines controlled by these ILECs.[65] While producing limited information from a group of reporting ILECs that are in no way representative of the entire class of small and mid-sized carriers, even those affiliated with the reporting companies, the ARMIS reporting obligations are especially burdensome and oppressive for mid-sized carriers required to file. For example, Roseville Telephone Company has estimated that it would incur, at a minimum, costs of $272,000, or about $2.06 per year per access line it serves, in order to comply with its ARMIS burdens for the first time.[66] Additionally, Citizens Communications, which recently commenced filing ARMIS reports, has estimated that it incurred costs of $1,836,438 to submit ARMIS reports last year.[67] This represents a cost of approximately $1.83 per access line per year. These relative costs contrast sharply with the compliance costs of larger companies, whose per-customer costs may reach only pennies per year.

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65 *See* Sec. II.B.2.

66 *2000 Biennial Regulatory Review – United States Telephone Association Petition for Rulemaking, RM-9709*, Comments of Roseville Telephone Company (Submitted Nov. 15, 1999).

67 Specifically, based on Office of Management and Budget time estimates and its own labor costs, Citizens has estimated that the labor costs associated with each ARMIS reports are as follows: $12,950 for the 492 report; $152,625 for the 43-01 report; $266,400 for the 43-02 report; $138,750 for the 43-03 report; $797,813 for the 43-04 report; and $44,400 for the 43-08 report. Additionally, Citizens estimates that the total non-labor costs associated with the ARMIS reporting requirements total $423,500. These costs do not include the direct costs of preparing the 43-05 report, which is the subject of a separate rulemaking proceeding. *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking in CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000).

The elimination of mid-sized ILEC data from the ARMIS data set would have no material impact on the data set. Only 9 of the 52 carriers currently required to file ARMIS reports are part of holding companies that meet the two percent standard. In addition, even counting the Sprint companies, the 22 mid-sized ILECs that file ARMIS today comprise just over 6 percent of the lines included in ARMIS.[68] Conversely, the Commission has never required approximately 1200 small and mid-sized ILECs operating today to file an ARMIS report.

Should the Commission decide to eliminate all ARMIS reporting requirements for mid-sized carriers, the Commission should clarify and explicitly find that mid-sized ILECs that have received extensions to comply with ARMIS reporting requirements beyond April, 2001 will qualify for any reporting exemption granted in these proceedings. Should these carriers qualify under the Commission's new reporting exemption thresholds, there is no reason to require the carriers to file under the old rules when they will qualify for an exemption from the reporting requirements under the new rules. In light of such a potential one-time reporting requirement, the Commission's functional approach for determining whether the benefits of reporting outweigh the burdens counsels strongly in favor of making retroactive any change in the reporting requirement threshold that would apply to such mid-sized carriers having recently received filing extensions.

2. ITTA Specifically Opposes the Application of a Restructured 43-08 to Mid-Sized Carriers

The Commission should not and, indeed, cannot impose new regulatory burdens on carriers as part of its Biennial Review process. To the contrary, Section 11 requires the

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68 Sec. II.B.2.

Commission to eliminate regulations meeting the criteria it specifies.[69] In the Notice, however, the Commission proposes to combine and revamp the 43-07 and 43-08 reports into a single filing and seeks comment on whether such a new reporting requirement will gauge the "carrier's efforts to upgrade and invest in technologies that provide improved service to their customers and promote efficiencies and cost savings."[70] Rather than creating a revamped and essentially new 43-08 report, the Commission should follow Congress's and its own streamlining mandates by declining to extend this reporting requirement to mid-sized carriers. Mid-sized carriers have never been required to file a 43-07 report, and should not be required to begin doing so now. It is important that the Commission clarify that the revised 43-07/43-08 Report would not apply to mid-sized ILECs. Therefore, to the extent the Commission decides to maintain ARMIS 43-07 and 43-08 reporting requirements, ITTA opposes the Commission's proposal to expand this reporting requirement to include mid-sized ILECs.

III. ITTA SUPPORTS CHANGES TO THE PART 32 ACCOUNTING RULES

ITTA generally supports the Commission's proposal to reduce the accounting burden created by Part 32 of the Commission's rules.[71] Contrary to the Commission's proposal,[72] the Commission should eliminate additional Class B accounts. The subaccounts that the states propose to include in the Class A accounting format[73] run contrary to the underlying goals of the Biennial Review process, which under the Section 11 mandate require a reduction in regulatory burdens if increasingly competitive telecommunications markets so permit. The Commission

69 47 U.S.C. § 161.

70 2000 Review Notice at ¶ 66.

71 *See* 2000 Review Notice at ¶ 14 *et sec.*

72 *Id.* at ¶ 16. The Commission proposes retaining the current Class B accounting structure for the ILECs currently reporting at the Class B level.

should not increase any regulatory burdens in proceedings that are part of its Biennial Review Process and should institute a separate rulemaking proceeding to propose increases in regulatory burdens.

ITTA does support the Commission's proposal to eliminate the fair market value comparison for asset transfers under $500,000.[74] Carriers would no longer be required to perform net book cost/fair market value comparisons for asset transfers totaling less than $500,000 per year, applicable to situations where regulated carriers sold or purchased assets to or from nonregulated affiliates and there existed no discernable market price.[75] In essence, the Commission seeks to build on the functional approach it used in Phase 1 of this proceeding,[76] where it eliminated the requirement that carriers make a good faith determination of fair market value for services where the total annual value is less than $500,000, noting that below this threshold the "administrative cost and effort of making such a determination would outweigh the regulatory benefits of a good faith determination of fair market value."[77] ITTA strongly supports the extension of this functional approach to eliminate the asset transfer assessment in line with the Section 11 standard, noting that increased competition renders such an asset transfer assessment an increasingly important burden that warrants elimination.

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73 *Id.* at fn. 33 (the states request creation of subaccounts for, *inter alia*, material and supplies, nonregulated investments, office equipment and electro-mechanical switching).

74 *Id.* at ¶¶ 33-34.

75 *See id. See also id.* at fn. 71-72.

76 *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1,* Report and Order in CC Docket No. 99-253, 15 FCC Rcd 8690 (2000) (Phase 1 Report and Order).

77 2000 Review Notice at ¶ 33 (*citing* Phase 1 Report and Order at ¶ 20).

ITTA also strongly supports USTA's proposal to eliminate the fair market value comparison for centralized services.[78] The fair market value rule dictates that if a transaction between affiliated entities cannot be valued at publicly available rates, it must be valued based on a comparison of fair market value and cost.[79] This proposal seeks to expand to all centralized services (regardless of whether the services are from a separate affiliate) the exception to the fair market value rule that applies to services received by a carrier from its affiliate that exists solely to provide services to members of the carrier's corporate family. It is far more costly to set up a corporate affiliate to provide these services. Accordingly, ITTA supports USTA's proposal because the Section 11 standard warrants expanding the exception to all centralized services. Further, the proposal would benefit consumers by permitting carriers to recognize the benefits of shared administrative costs.

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78 2000 Review Notice at ¶ 30.

79 *Id.*

IV. CONCLUSION

ITTA urges the Commission to proceed rapidly in this Biennial Review period to eliminate the outdated regulatory burdens its rules impose on midsize and smaller carriers, as described in its Comments in this proceeding.

Respectfully submitted,

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